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OF

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CONTAINING DECISIONS, OPINIONS AND RULINGS OF THE STATE OFFICERS, DEPARTMENTS, BOARDS AND COMMISSIONS

EDITED BY

WILLIAM V. R. ERVING, Miscellaneous Reporter

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DEPARTMENT REPORTS

OF THE

STATE OF NEW YORK

CONTAINING THE

MESSAGES OF THE GOVERNOR

AND THE

DECISIONS, OPINIONS AND RULINGS

OF THE

State Officers, Departments, Boards and Commissions

OFFICIAL EDITION

WILLIAM V. R. ERVING, Miscellaneous Reporter

VOLUME 23

ALBANY
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1920

INDEX

STATE OFFICIALS

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Corrected to date

(Address, Albany, N. Y., except where otherwise indicated)

1920

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In the Matter of the Petition (or Complaint) of ROBERT W. BULL, as Receiver of THE HORNELL TRACTION COMPANY, under Subdivision 1, Section 49, Public Service Commissions Law, and Section 181, Railroad Law, for Permission to Increase Passenger Fares, and to Put the Proposed New Fares in Effect on Short Notice

Case No. 7528

(Public Service Commission, Second District, June 22, 1920)

Electric railway corporations — increased fare granted.

An increase of fare from six to eight cents in the two operating zones of a company will be granted where it appears that such increase will not produce an excessive return upon the invested capital, and it is demonstrated that it is warranted and needed if the utility is to be continued in operation, the fare thus established to remain in effect for a period of one year unless otherwise changed by the Commission.

Milo M. Acker, attorney for receiver of Hornell Traction Company and Robert W. Bull, the receiver, in person.

BY THE COMMISSION.— The petitioner here as receiver, appointed by the United States District Court, September 20, 1917, in an action brought by a creditor, operates the lines of the Hornell Traction Company, in the city of Hornell, with an interurban line to the nearby village of Canisteo. The distance between the boundary lines of these two municipalities is about four miles, and about midway lies Glenwood Park, which divides the two operating zones of the company, in each of which zones an increase of fare from six to eight cents is here applied for.

This company owns, and this petitioner operates as its receiver, 9.826 miles of main track, adding to which

the length of turnouts and sidings, and tracks in car barn makes the total trackage 10.774 miles.

The condition of this company, and its then need of added revenue was fully considered by this Commission in Case No. 6083, in which by an order, entered November 20, 1917, the rate of fare was increased from five to six cents in each zone.

In the order in that case the financial condition of this company up to and including December 31, 1916, is set forth.

During a short time in 1917, and the entire years of 1918 and 1919 the increased six cent fare in each zone has been collected. The income from operation, less taxes, during these years was as follows:

	1917	1918	1919
Operating revenue.....	$55,254	$59,891	$70,919
Operating expenses....	47,590	52,830	64,275
	$7,664	$7,061	$6,644
Taxes	3,199	3,281	3,471
Income from operations	$4,465	$3,780	$3,173

No reserve for depreciation has been accumulated except that in the year of 1919 a small reserve for depreciation of ways and structures of $1,937, and for depreciation of equipment of $746, was deducted from operating expenses.

During the twenty-five years of the company's existence only 15 per cent in dividends has been declared, the last dividend being paid in 1915. The outstanding bond issue aggregates $150,000, and receiver's certificates, authorized by the court, have been issued, and are outstanding to the amount of $25,000 more.

No adequate revenues have been obtained to make needed replacements, and the road has been wearing

out, both as to its track and equipment, and there are now needed replacements which would cost, it is estimated, about $80,000.

The road has not had a new car since 1915 except one body which was rebuilt by the company, and many of the cars have been in service since prior to 1898. New one-man cars are needed to properly and economically operate the road.

Money for this large expenditure, in the way of replacements, can only be had if revenue sufficient can be assured to put the road on a basis which would yield a revenue sufficient to authorize the needed investment.

The experience encountered at the time of the previous increase in rates of fare indicates that much less than the theoretical percentage of revenue will be realized from the additional charge per passenger. That increase resulted in a diminution of travel so great that it took about two years for the road to get back to a position where it carried passengers in number substantially equal to that transported before the increase.

The passenger revenue for 1919 was $70,919. If an increase of fare of 33⅓ per cent could be fully reflected in the added revenue, the addition would be a third of that amount, or $23,640. It is safe to say, as disclosed by the evidence given upon the hearing in regard to this matter, that no more than half of this theoretical increase would be realized for sometime in the future. This may be taken as a basis for a proper estimate, and for the next year at least the added revenue, it may be safely assumed, will not exceed $14,000.

The experience of the first four months of 1920 shows an increase in passenger revenue over that of 1919 of $4,629, but also shows an increase in operating cost of $4,755.

This company, like many others, is being compelled to pay increased wages to its employees. These wages

range from $3.50 to $3.75 per day of ten hours, and are not excessive bearing in mind the wages paid for similar services in other localities. This wage scale is about 50 per cent higher than it was when the order increasing the fare to six cents was made by this Commission, and the added cost from such wages during the year 1920, as compared with the year 1919, amounts to $4,380.

The cost of power also will be higher. The power is purchased from the Hornell Electric Company, which furnishes it under a contract, which is affected by the price of coal, and in view of the higher present cost of that fuel, the cost of the power to this petitioner is automatically increased.

It is even yet to be hoped that the conditions existing of high cost may not prove permanent, and any order fixed upon these conditions, increasing the fare as requested to eight cents, should not be of long effective force. It is the opinion of the Commission that one year would be sufficient, at the expiration of which time, and under the conditions then existing, further action may, if necessary, be taken.

In the next year's experience with the increase of fare requested, in the light of the information we now have, it would seem that results substantially as follows may reasonably be expected:

The net income from operation in 1919, less taxes of.....	$3,173
An increase of revenue from increased fares for one year estimated at.....	12,000
	$15,173
Deduct for increased labor charges.....	4,380
	$10,793

We have not yet deducted for the increased cost of power on account of the increased cost of fuel over last year. Neither have we deducted any adequate amount for a proper maintenance of track and equipment, the need of which is so sorely indicated, and for which the revenues of 1919 were only charged about $2,700, and several years prior to that nothing was deducted.

An examination of the other operating expenses indicates an absence of extravagance. The salaries are not excessive.

Local operations in the city of Hornell are less profitable in proportion than those of the interurban line, and if an increase of fare is granted, it should be applicable to the local traffic in that municipality. The same is said to be true of the village of Canisteo, but in this municipality there is only five-eighths of a mile of track, and local riders are very infrequent. This travel is practically negligible.

The valuation of this property in the previous case was placed at a minimum of $200,000. Considering there is over ten miles of track, nearly half of which is on paved streets, an estimated fixed capital of $20,000 a mile is certainly very low, judging from the experience of this Commission with other companies.

Making no allowance for increased power cost, or for the renewals and replacements so important to the continued life of this company, we have only a return on the foregoing figures of slightly over 5 per cent. Having arrived at this result, from the progress thus far made, indicating that the fare requested will not produce an excessive return upon the invested capital, without taking into consideration any working capital at all, it would seem that further investigation is rendered unnecessary, and that it is already demonstrated that this fare, although large, is actually warranted

and needed by this receiver, if he continues to operate this utility. In the hope, if not the expectation that conditions may change, the effective period of the order, should be limited to one year, and thereafter until the further order of this Commission.

It is therefore ordered: 1. That the Hornell Traction Company be and it hereby is authorized to charge a maximum fare of eight cents for the transportation of an adult passenger (a) between any two points within the city of Hornell, including points within said city and points intermediate to and including Glenwood Park; (b) between Glenwood Park and Canisteo and points intermediate thereto. The maximum fares herein fixed shall remain in effect for a period of one year from the date or this order and thereafter unless or until otherwise changed by order of this Commission.

Ordered: 2. That the Hornell Traction Company be and it hereby is authorized to file, on not less than five days' notice to the public and the Commission, a passenger tariff superseding and canceling its present passenger tariff P. S. C.—2 N. Y.—No. 5, reissuing the matter therein contained without change other than to establish fares in accordance with the provisions of Ordered 1 clause of this order, such new tariff to bear on title page the following notation, "Issued on five days' notice to the public and the commission, authority of order of the Public Service Commission, Second District, State of New York, of date June 22, 1920, Case No. 7528."

In the Matter of the Complaint of EDWARD S. WALSH, as Superintendent of Public Works of the State of New York, against UNITED STATES RAILROAD ADMINISTRATION — NEW YORK CENTRAL RAILROAD, as to Operation of Railroad Tracks at Erie Basin, in the City of Buffalo

Case No. 7060

(Public Service Commission, Second District, June 24, 1920)

Public Service Commissions Law, § 49, subd. 3, paragraph A, as amended by chapter 541 of the Laws of 1920.

Transportation service ordered between the Erie Basin Barge Canal public terminal in the city of Buffalo and shippers located on the tracks of the New York Central Railroad Company and on the tracks of any other railroad company, with which the New York Central Railroad Company can interchange traffic.

Proceeding dismissed as against the United States Railroad Administration.

BY THE COMMISSION.— The Commission having directed that the petition of Edward S. Walsh, as Superintendent of Public Works of the State of New York, duly filed and to which answers were duly interposed and filed by the New York Central Railroad Company and the United States Railroad Administration be heard before Hon. Charles B. Hill, its chairman, at Room 500 Lincoln Building, 327 Washington street, Buffalo, N. Y., on January 17, 1920, and said hearing having been held at the time and place aforesaid and continued before the whole Commission at its hearing room in the city of Albany, N. Y., on February 24, 1920, and on May 27, 1920, at which times and places testimony was taken, evidence submitted and argument heard, the parties above named appearing by counsel, and it having been shown that the

physical connection between the tracks of the New York Central Railroad and the public terminal established and operated by the State under the provisions of chapter 746 of the Laws of 1911, situated in the city of Buffalo, N. Y., and known as the Erie Basin Barge Canal Terminal has been made as provided by paragraph A, subdivision 3 of section 49 of the Public Service Commissions Law as amended in 1917, and that said connection is reasonably practicable, has been made with safety to the public and the amount of business existing or prospective is sufficient to justify the outlay; that the work and cost of making such physical connection has been wholly done and paid for by the State of New York and that the State of New York seeks no remuneration from any of the parties in this proceeding for such expenditure; and it appearing that the United States Railroad Administration has no further interest in this proceeding by reason of the enactment of the provisions of the act of Congress known as the Transportation Act; and the complainant having further moved before the Commission in this proceeding at the hearing held on May 27, 1920, that the New York Central Railroad Company, a party above named be made to comply with paragraph A, subdivision 3 of section 49 of the Public Service Commissions Law as amended by Laws of 1920, chapter 541, and the New York Central Railroad Company having been heard by its counsel in opposition to said motion,

It is now after due deliberation finally ordered,

1. That the New York Central Railroad Company provide a transportation service between the Erie Basin Barge Canal public terminal in the city of Buffalo, and shippers located on its tracks, in the city of Buffalo, N. Y., between the Erie Basin Barge Canal public terminal in the city of Buffalo, and shippers

located on its tracks at any other point within the State of New York and between the Erie Basin Barge Canal public terminal in the city of Buffalo, and shippers located at any other point in the State of New York, on the tracks of any other railroad company, with which the New York Central Railroad company can interchange traffic.

2. That such transportation service shall include the furnishing of necessary rolling stock by the New York Central Railroad Company, for all traffic moving from the Erie Basin Barge Canal public terminal and from all shippers located on its tracks in the city of Buffalo or any other point on its tracks within the State of New York to the Erie Basin Barge Canal public terminal, the operation by the New York Central Railroad Company upon the railroad tracks within such Erie Basin Barge Canal public terminal by such railroad's own motive power and servants, all rolling stock going to or coming from said Erie Basin Barge canal public terminal; and the spotting, placing and removing of rolling stock therein.

3. That the New York Central Railroad Company shall within thirty days, after service of this order, file tariffs with the Commission for all service into and out of said terminal, and over its connecting lines.

4. That this proceeding be and is hereby dismissed as against the United States Railroad Administration, a party above named.

In the Matter of the Petition of LEVERETT S. MILLER, as Receiver of THE WESTCHESTER STREET RAILROAD COMPANY, under Subdivision 1, Section 49, Public Service Commissions Law, and Section 181, Railroad Law, for Permission to Increase Passenger Fares; under Section 29, Public Service Commissions Law, for Permission to Put in New Tariff on Short Notice; under Section 53, Public Service Commissions Law, for Permission to Exercise Fare Rights under Amendments to Municipal Franchises

Case No. 7547

(Public Service Commission, Second District, June 24, 1920)

Electric railway corporations — increased fares granted.

Increased fares permitted for a short period as an experiment to determine whether the public utility can survive and to preserve the continued operations until more favorable conditions are encountered.

L. S. Miller, receiver, the Westchester Street Railroad Company.

Eugene F. McKinley, Ralph P. Buell and John B. Knox, for applicant.

William E. Lyon, Jr., for himself.

William R. Condit, corporation counsel, for city of White Plains.

E. R. Eckley, for village of Mamaroneck.

BY THE COMMISSION.— The Westchester Street Railroad, operating a system of trolley lines radiating from the city of White Plains, was before this Com-

mission something over a year ago, in an application for an increase of fare, to be produced by the installation of a zoning system. By decision of the Commission March 26, 1919, the creation of certain zones was permitted. 19 State Dept. Rep. 139.

A description of the railroad, its various operations, and its financial experiences during the years of 1917 and 1918 were fully set forth in the opinion of Commissioner Fennell, concurred in by the other members of this Commission.

It was then stated that with an annual loss of $100,000, on a property investment of about one million, the company was headed toward bankruptcy unless some remedy could be supplied. It had been demonstrated that a flat raise of fare to seven cents was inefficient, as it was more than off-set by loss of passengers, due to the disinclination to pay an increased rate, and the ability, on account of the location of the railroad, of many of its short-haul passengers to walk to their destination, which they preferred to do rather than to incur the added expense of the increased charge.

Unfortunately the remedy then applied did not seem to meet the trouble, and on February 28, 1920, in a foreclosure action this applicant was appointed receiver, and is now operating the lines of the company.

The operations for the year 1919, although most of the year the company enjoyed the benefits of the increased fares from the zoning system, showed a net operating deficit of $38,269.82. By addition of the taxes for that period of $11,917.81, the deficit was increased to $50,187.63.

For the months of January and February of the current calendar year, the operating deficit was $17,-470.10, and for the months of March and April, such deficit amounted to $11,410.57.

Argument at length is unnecessary in this situation to establish the proposition that added revenue is necessary if operations of this utility are to continue, and the public be further served by these lines.

Doubt exists as to whether the traffic will stand any substantial increase in fares. The disinclination of prospective passengers to pay the added charges has been demonstrated, as already stated, and at length discussed in the opinion in the former case.

It is to the interest of these communities, and it is the duty of this Commission if possible, to preserve this public utility. The applicant here realized the importance of its continuance and interested, of course, more directly in the success of his receivership, has made application for permission, *temporarily only*, for the short period intervening between now and August first next, to charge added fare.

In most cases the communities who had granted franchises containing restrictions as to the amount of fare to be collected within their limits, have waived these restrictions. This does not apply to the village of Mamaroneck. In this village the plan as originally proposed in the petition herein was to create two zones within that village, including the short distance overlapping its southern boundary where the line extends into the nearby village of Larchmont.

There was filed with the Commission what purported to be a certified copy of the consent of that village waiving its franchise restrictions. It appears that such resolution was never adopted and the exhibit was improperly certified by the village clerk.

The creation of these two zones, although to a large extent overlapping, permitted the collection of two fares of five cents each from certain passengers in the village of Mamaroneck, in violation of the franchise restriction. This, of course, cannot be permitted, and

at the second hearing the company filed an amended plan providing for only one zone in the village of Mamaroneck.

Thus the application in its present amended form provides for increases in local fares only, where restrictions affecting the same have been waived by local authorities. These waivers terminate August 1, 1920, to which time only the order of this Commission increasing the fares is asked to extend.

Some discussion arose at the hearing between the receiver and his representatives, and the corporation counsel of the city of White Plains as to the extending of free transfer privileges. It was agreed that this free transfer privilege area be extended from that set forth in the original application so that on the Mamaroneck line such transfer privilege extend to Gedney Way instead of the Bloomingdale switch, and on the Scarsdale road to Farley road instead of Quinby switch.

The proposed changes in fares are as follows:

The Tarrytown line so called, extending from White Plains to Tarrytown, was divided into two zones by a previous decision of this Commission, divided by the village of Elmsford, which was in both zones, to that extent the zones overlapped. A fare of five cents, authorized by a previous order of this Commission, in each of these zones was asked to be increased to six cents, with the exception that passengers traveling in the city of White Plains on this line are only to be charged five cents.

The Silver Lake Park Line is only affected by the cessation of the issuing of free transfers, except to and from points in the city of White Plains, northerly of Gedney Way.

The same limitations are placed upon the transfers issued and honored by the Westchester avenue line.

What was formerly the Mount Vernon line has been curtailed. That part south of the village of Scarsdale was operated under a lease from the Westchester Street Electric Railroad Company, which has been cancelled, so that the operation of the line ceases at the southern boundary line of the village of Scarsdale.

This was formerly operated as one zone, the length of which was five and five one-hundredths miles. This has been divided into two zones by the Farley road.

Under the amended petition the Mamaroneck line, so far as it extends within the city of White Plains, which was formerly one zone, is divided into two zones, separated by Gedney Way. The former zone existing between the city of White Plains and the village of Mamaroneck remains unaltered, the village of Mamaroneck constituting a zone by itself, the remainder of the line for a distance of three-quarters of a mile, terminating in the village of Larchmont, which was formerly a part of the Mamaroneck zone, is made an additional zone.

In each of the proposed zones the fare is five cents, except on the Tarrytown line, in which, as has already been stated, the fare is increased to six cents in each zone except as to local passengers in the city of White Plains.

Operating the lines in an economical way, in the hope of continuing thereby the further operation of the road, giving as much service as the patronage demands, it is estimated that the proposed plan would result in increased revenue sufficient to permit continued operations of the line.

Computations have been made and detailed in the exhibits, indicating that if the proposed changes should be put into effect, there will result an annual net operating revenue of $6,317.70. This, of course, is almost impossible to determine. It is sufficient for this pro-

ceeding to know that bearing in mind the extent of this property, and its obvious cost, which was stated in the previous opinion as approximately a million dollars, there can certainly be no reasonable claim of excessive return, when it is borne in mind that its apparent net operating revenue, which as hoped for and perhaps expected, is over five thousand dollars less than the taxes on the property last year.

This proposed increase is merely an experiment by which it is hoped that continued operations of the lines may be preserved until more favorable conditions are encountered.

On the evidence, which has been thus cursorily reviewed, it would seem to be the duty of this Commission, joining with this receiver and the local authorities, to permit the increase for this short period, in order that in the light of actual experience it may be determined whether this public utility can in any event survive. There seems to be no possible view in which the net revenue would produce anything like an adequate return upon the capital invested.

The evidence also shows that the increased fare will not in any city or incorporated village produce an excessive return.

It is therefore ordered: That The Westchester Street Railroad Company (Leverett S. Miller, receiver) be and is hereby authorized to file, on not less than three days' notice to the public and the Commission, a new local and joint passenger tariff to supersede and cancel tariff filed by The Westchester Street Railroad Company as its P. S. C. — 2 N. Y. — No. 4 and Supplement No. 1 thereto, and therein provide, as maximum rates and charges to be observed to and including July 31, 1920, unless this Commission in the meantime may otherwise order, the following:

TARRYTOWN LINE

Zone 1: Between the New York Central Railroad station and the White Plains city line at Fulton street, a distance of approximately fifty-nine one-hundredths miles, fare five cents. See note.

Zone 2: Between the New York Central Railroad station and the western boundary of Elmsford, a distance of approximately three and sixty-six one-hundredths miles, with free transfer privilege to or from the White Plains Court House, fare six cents.

Zone 3: Between the eastern boundary of Elmsford, and the end of line at Tarrytown, a distance of approximately four and twenty-five one-hundredths miles, fare six cents.

SILVER LAKE PARK LINE

Zone 1: Between the New York Central Railroad station and the end of line at Silver Lake Park, a distance of approximately two and fifteen one-hundredths miles, fare five cents. See note.

WESTCHESTER AVENUE LINE

Zone 1: Between Mamaroneck avenue and Main street and the end of line on North street, a distance of approximately one mile, fare five cents. See note.

SCARSDALE LINE

Zone 1: Between the New York Central Railroad station and the White Plains city line at Farley road, a distance of approximately one and sixty one-hundredths miles, fare five cents. See note.

Zone 2: Between the White Plains city line at Farley road and the southern boundary of the village of Scarsdale, a distance of approximately two and seventy-four one-hundredths miles, fare five cents.

MAMARONECK–LARCHMONT LINE

Zone 1: Between the New York Central Railroad station in the city of White Plains and Gedney Way, in the city of White Plains, a distance of approximately two miles, fare five cents. See note.

Zone 2: Between Gedney Way, and the southerly boundary of the city of White Plains, a distance of approximately two and one-tenth miles, fare five cents.

Zone 3: Between the southerly boundary of the city of White Plains and the northerly boundary of the village of Mamaroneck, a distance of approximately one and four one-hundredths miles, fare five cents.

Zone 4. Between points in the village of Mamaroneck, a total distance of approximately two and sixty-five one-hundredths miles, fare five cents.

Zone 5: Between the westerly boundary of the village of Mamaroneck and the end of the line at Chatsworth avenue, village of Larchmont, in the town of Mamaroneck, a distance of approximately three-fourths of a mile, fare five cents.

NOTE.—Passengers boarding cars in zone No. 1 of any line within the city limits of White Plains will be entitled to a free transfer, good as follows: Tarrytown line, Fulton street (White Plains city line); Silver Lake Park line, Mamaroneck river; Westchester avenue line, end of line on North street; Scarsdale line, Farley road; Mamaroneck line, Gedney road.

In the Matter of the Complaint, under Sections 71 and 72, Public Service Commissions Law, of TRUSTEES OF THE VILLAGE OF GRANVILLE, WASHINGTON COUNTY, against GRANVILLE ELECTRIC AND GAS COMPANY, as to Proposed Increases in Price of Gas and Electricity Furnished Customers

Case No. 6421

(Public Service Commission, Second District, June 29, 1920)

Gas companies — increased rates — service charge.

It appearing that increased revenue is needed by a gas company operating in a small community, permission granted to increase rate to twenty-five cents per 100 cubic feet. Following a calculation by Commission's experts a service charge of one dollar per month per meter was determined to be excessive and such charge fixed at the sum of seventy-five cents per month.

M. D. Whedon and J. M. Daly, for Granville Electric and Gas Company.

C. E. Parker, for village of Granville.

BY THE COMMISSION.— By order of the Commission made March 27, 1919, based upon an opinion of that date, after a contest, the gas rates of Granville Electric and Gas Company were fixed at $2 per 1000 cubic feet with a minimum charge of $1 per month and a penalty of 10 per cent for slow payment. The company now shows a net loss in operation for the year 1918 of $2,573.34, and for the year 1919 of $937.38. It also shows that during the quarter ended March 31, 1920, there was a net operating loss of $1,287.07, and assuming this experience to be fairly representative of what may be expected for the entire year, we get an annual operating loss of $5,148.28.

The company produces exclusively what is known as water gas, and is meeting the common experience

of gas companies in the acute increase which is now prevalent in the cost of its raw materials, especially coal and gas oil. An estimated income account for the twelve months ending March 31, 1921, has been prepared and presented by the company, in which the same consumption of gas as in the preceding twelve months is assumed at the present tariff rates and using prices paid in May, 1920, for coal and oil, assuming an increase of 5 per cent in the other operating expenses, including proper renewal and replacements accrual, which shows that an additional revenue is required to meet operating expenses, taxes and depreciation only, of $4,229.75. In addition there would be required to earn an 8 per cent return on the investment, $6,622.85. The rate base is not a subject of dispute as it was fixed in the previous determination except as to subsequent additions which are small in volume.

The company now applies for permission to increase its rate to twenty-five cents per 100 cubic feet, with a service charge of one dollar per month, which practically supersedes the minimum charge of like amount.

If we assume the same annual sales as under the previous rates an annual experience under the new rates could be expected, according to the claims of the company to result substantially as follows:

Gas sales 1919 (annual report)...(M cu. ft.)	5594.6
Assuming same annual sales as 1919 revenue from consumption charge of $.25 per 100 cubic feet would be 5594.6 x $2.50.....	$13,986
Service charge, $1 a month, 389 meters at $12..	4,668
Penalties, $10.50 a month average (allowed in opinion of March 27, 1919).....	126
Revenues from sale of gas.....	$18,780
Other revenues.....	120
	$18,900

Expenses, Exhibit No. 3.....	$13,948	
Taxes, Exhibit No. 3.....	744	
Uncollectible bills, Exhibit No. 3....	2	
Renewals and replacements accrued, Exhibit No. 3.....	1,490	
		16,184
Available for return on investment.....		$2,716

Equivalent to about 3.3 per cent on $82,786, rate base.

The proposed service charge is much in excess of like charges which have been put into effect in other installations of like size, and while the return shown is inadequate I think that fact is no excuse for making an unduly high service charge. Following is a calculation made by the Commission's experts which we think indicates that a service charge of nine dollars per year is all that is allowable:

Service Charge — (Gas)

Based on Company's Annual Report, year 1919.

Expense Charges

	Total charge	Per cent to service charge	Amount
Transportation and distribution expense	$72 69	100	$72 69
Commercial expense	792 87	100	792 87
General and miscellaneous expense	1,364 94	50	682 47
Uncollectible bills.....	1 65	100	1 65
Taxes	744 00	25	186 00
Work on consumers' premises.	153 20	100	153 20
Repairs of gas meters.....	153 74	100	153 74
			$2,042 62

389 Services in use Dec. 31, 1919.

$$\frac{2042.62}{389} = \$5.27 \text{ per year per service.}$$

Fixed Capital Charges

	Total charge	Per cent to service charge	Amount
Services	$6,113 28	100	$6,113 28
Meters	4,042 54	100	4,042 54
Meter installation	802 00	100	802 00
Proportion of related overheads	2,200 00	100	2,200 00
			$13,157 82

Interest 8% of $13,157.82 = $1,050
Depreciation 4% of $13,157.82 = 525

$575

$$\frac{1575.00}{389} = \$4.05 \text{ per year per service}$$

5.27

9.32 per year per service — total
0.77 per month per service.

It was stipulated on the hearing that any increased rates would be applicable from the time the meter readings which are taken during the last week in June, so that what is known as the July gas shall be paid for at the higher rates.

Under these circumstances, on the evidence at the hearings, and after due consideration, this Commission feels justified in permitting the prices hereinafter named to be charged, and, it is, therefore,

Ordered, under subdivision 12, section 66, Public Service Commissions Law, that Granville Electric and Gas Company shall publish and file with this Commission on not less than one day's notice and effective after the date of the last reading of its gas meters in June, 1920, a new schedule of rates and charges to be charged by said company for manufactured gas in the incorporated village of Granville, Washington county — not to the village as a municipality — (which new schedule

shall supersede a conflicting schedule now in effect) and provide in said new schedule for manufactured gas for fuel and light service rendered thereunder at rates and charges, only, not in excess of the maximum prices hereinafter fixed, and which shall contain the regulation as to prompt payment of bill for gas consumed hereinafter named, which schedule shall bear notation: "Issued under order of the Public Service Commission, Second District, of date June 29, 1920, in Case No. 6421."

Further ordered, under sections 71 and 72, Public Service Commissions Law, that the maximum prices which may be charged for manufactured gas by Granville Electric and Gas Company in the incorporated village of Granville, Washington county (not to the village as a municipality) after the date of the last reading of said company's gas meters in June, 1920, and for a period of one year after such last reading, and after said period of one year until the further order of this Commission made to apply after said period, shall be as follows, to wit:

Twenty-five cents, net, per 100 cubic feet of manufactured gas for fuel and light.

Bills for gas consumed may be rendered customers, showing one cent per 100 added to said net rate and bearing plainly the statement that said additional sum will be deducted if the bill is paid within ten days.

There shall be no minimum charge.

There may be a service charge of seventy-five cents only per month per meter.

In the Matter of the Petition of ALEXANDRIA BAY-REDWOOD TRANSPORTATION COMPANY, INC., under Chapter 667, Laws of 1915, for a Certificate of Public Convenience and Necessity for the Operation of a Stage Route by Auto Buses in the City of Watertown (it Being Proposed that the Route Shall Also be Operated Between Watertown and the Incorporated Village of Alexandria Bay, Jefferson County)

Case No. 7587

(Public Service Commission, Second District, July 8, 1920)

Automobile stage lines — certificate of public convenience and necessity granted.

It is not in the interest of the public to allow such competition in the operation of automobile stage lines as will result in the bankruptcy of the person engaged in it, for the ultimate result is that the public will not receive any service whatever. A certificate, however, will be granted where a large part of the territory to be served is not reached by any transportation line. Such certificate shall specifically exclude the carriage of passengers within a city in competition with the local traction company.

George S. McCartin, attorney for petitioner.

Thomas Burns (by Edward W. Carroll), attorney for House & Vrooman.

Francis McKinley, attorney for Fred I. Dailey, in opposition.

VAN NAMEE, Commissioner.— The Alexandria Bay-Redwood Transportation Company was originally organized in 1916. There were about sixty stockholders, mostly residents of the village of Alexandria

Bay. The company operated and still continues to operate a bus line between the villages of Alexandria Bay and Redwood in the county of Jefferson, a distance of about six miles.

The company is now in process of reorganization and desires to operate also between the village of Alexandria Bay and the city of Watertown passing through Fishers' Landing, Omar, LaFargeville, Stone Mills and Gunns' Corners. The proposed part of this operation, for which a certificate from this Commission is requested, is that part of the route which lies within the boundaries of the city of Watertown.

It is necessary under the statute for the company to procure a consent from the city of Watertown for the operation over certain streets in such city and a certificate of public convenience and necessity from this Commission. No town board of any town nor the board of trustees of any village through which the proposed line is to pass has brought itself within the provisions of section 26 of Transportation Corporations Law, and, therefore, their consent for this operation is not required. The consent of the city of Watertown has been granted under a resolution adopted by the common council of the city on May 3, 1920.

There are at the present time two auto routes operating between Watertown and Alexandria Bay, one operated under a certificate granted by this Commission to House & Gaffney, which operates from Watertown through Pamela and Theresa to Alexandria Bay; this route is nine miles further than the proposed route and does not operate on the same road at any point. The other line is operated by Mr. Dailey and runs from Watertown to Gunns' Corners through Depauville to Clayton, thence paralleling the St. Lawrence river through Fishers' Landing to Alexandria Bay.

The proposed route will run on the same road as

the Dailey route from Watertown to Gunns' Corners, a distance of nine miles, and from Fishers' Landing to Alexandria Bay, a distance of six miles. The total mileage of the proposed route from Watertown to Alexandria Bay is thirty miles.

The only railway transportation line of any character touching any of the villages through this route is the New York Central line, which runs through the village of LaFargeville. The distance by rail from LaFargeville to Watertown is forty-three miles and by bus is seventeen miles. The passenger train service is infrequent.

The officials of the New York Central were notified of this hearing but did not appear, nor was any objection to the granting of this certificate entered by them.

Alexandria Bay is a village of about 2,000 inhabitants and is the principal point in the Thousand Island region below Clayton. It is not on the line of any railroad, the nearest being at Redwood, a distance of six miles. Travel between the village and the city of Watertown is large, especially during the summer season.

The proposed route after leaving Fishers' Landing passes through Omar, which is a small hamlet, thence southward through LaFargeville, a settlement of about 1,000 people, and one of the centers of the hay trade in Jefferson county, thence continuing southerly through Stone Mills, another small hamlet, to Gunns' Corners. After leaving Fishers' Landing and until Gunns' Corners is reached, a distance of fifteen miles, this route passes through a section not already served by any automobile bus route, the inhabitants of which at present, except those at LaFargeville, have to travel several miles before reaching the line of any established system of transportation.

Evidence was given at the hearing that the opera-

tion of both the present lines between Alexandria Bay and Watertown is profitable though no figures were produced. With the amount of new territory to be opened by this proposed line it would seem that its operation might also be profitable without seriously interfering with the revenues of the lines already established. It is true that the proposed line parallels the Dailey route from Gunns' Corners to the city of Watertown, but most of the passengers on either line will undoubtedly travel the entire distance from Clayton or Alexandria Bay, as the case may be, and the travel from Gunns' Corners to the city of Watertown which will be affected is small. The same condition exists in the joint operation from Fishers' Landing to Alexandria Bay.

It may be inferred that the city by granting its consent to the operation over certain streets on which other lines already operate, is satisfied that congestion will not result and that such operation is beneficial to the city.

While the petition to the city only made application for a franchise for its passenger motor buses to enter the city of Watertown and in another paragraph specified the route which the company proposed to operate between Watertown and Alexandria Bay, the consent of the city gave permission for the company to operate over the route proposed in such petition. It must be taken that such consent on the part of the city was only given for the operation of such buses over the streets in the city necessary to reach its terminus from the city limits and did not attempt to designate the route to be followed beyond the city boundaries. The Commission, however, in several cases decided subsequent to the amendment made by chapter 667 of the Laws of 1915 to section 25 of the Transportation Corporations Law, has held that in

granting these certificates of convenience and necessity the Commission should take into consideration the competition involved and the condition of existing bus lines and other transportation facilities outside the limits of a city on the same route or closely paralleling the route proposed, to the end that persons or companies operating over existing routes should receive a fair measure of protection and that ruinous competition should not be allowed. It is not in the interest of the public to allow such competition as will result in the bankruptcy of the persons engaged in it for the ultimate result is that the public will not receive any permanent service whatever. *Matter of Petition of Buschini*, 7 P. S. C., 2nd Dist., 301, 18 State Dept. Rep. 270; *Matter of Petition of Blevins*, P. S. C., 2nd Dist., Opinion No. 437, 20 State Dept. Rep. 160; *Matter of Petition of Van Hoesen*, P. S. C., 2nd Dist., Opinion No. 434, 21 State Dept. Rep. 121; *Matter of Petition of Licewicz*, P. S. C., 2nd Dist., Opinion No. 480, 22 State Dept. Rep. 455.

In this case, after a careful study of the evidence, together with personal knowledge of the conditions of the section and the routes operated and proposed to be operated, by the sitting Commissioner, and after due consideration it appears that public convenience and necessity will be met by the petitioner being allowed to operate its proposed line in this territory, a large part of which is not reached by any transportation line, either railroad or automobile.

Nothing is said in the consent given by the city relating to the receiving or discharging of city passengers within the city limits but it is assumed that this line does not propose to compete with the local traction company.

The certificate will, therefore, issue under the terms of the consent granted by the city for a period of five

years and the usual conditions imposed by this Commission and specifically excluding the carriage of passengers from any point in the city of Watertown to any other point in said city.

An order has been entered accordingly.

Hill, Chairman, and Irvine, Barhite and Kellogg, Commissioners, concur.

In accordance with the foregoing opinion, the Commission on the same day issued the following certificate:

BY THE COMMISSION.—A petition under chapter 667, Laws of 1915, having been filed with this Commission by Alexandria Bay-Redwood Transportation Company, Inc., for a certificate of public convenience and necessity for the operation of a stage route for carrying passengers and small parcels of freight by an auto bus or buses in the city of Watertown on a route hereinafter named (it being proposed that the route shall also be operated between Watertown and the incorporated village of Alexandria Bay, Jefferson county); and it appearing that said petitioner has received the consent of said city to such operation; and a public hearing on said petition, after due notice, having been held by Commissioner Van Namee of this Commission in the city of Watertown on June 26, 1920, those named in the opinion herein appearing; and this Commission hereby determining from the papers and evidence at the hearing and for the reasons stated in its opinion of this date in this matter that public convenience and necessity require the operation of this stage route in the city of Watertown as a part of said route outside of the city, and under the conditions hereinafter named, hereby

Certifies, that public convenience and necessity require the operation by Alexandria Bay-Redwood

Transportation Company, Inc., of a stage route for carrying passengers and small parcels of freight and to be operated by an auto bus or auto buses in the city of Watertown on Bradley street, West Main street, Court street and Public Square, to be operated only as a part of a stage route between the city of Watertown and the incorporated village of Alexandria Bay, on the following conditions:

a. That this certificate is granted subject to the consent to this petitioner for said route in said city given by the city council May 3, 1920.

b. That the buses to be operated under the certificate shall not take on or deliver a proposed passenger from any point in the city of Watertown to any point in said city.

c. That this certificate is granted subject to the present and future rules of the State Commission of Highways respecting the use of State and county highways.

This certificate may not be leased or assigned without the consent of this Commission.

In the Matter of the Appeal of JOHN BLAKE, Relative to Transportation of his Daughter to the School in Union Free School District No. 1 of the Town of Van Etten, Chemung County

Case No. 598

(Education Department, June 30, 1920)

When a school is maintained in the home district and the parents have means of transportation, conveyance at the district's expense will not be ordered. Appeal dismissed.

Frederick E. Hawkes, attorney for appellant.

Howard M. Rowe, attorney for respondent.

FINLEY, Commissioner.— The appellant is a resident and taxpayer of union free school district No. 1 of the town of Van Etten, Chemung county, and is the father of Renia Blake, a child of ten years of age. He alleges that his residence is about three miles from the schoolhouse in said district and that for a distance of one and five-eighths miles the road runs through woods and is little traveled in winter. This road intersects the Langford Creek road which is well traveled. On January 21, 1920, the appellant appeared before the board of education of said district and requested that transportation be provided for his daughter. He alleges that the board refused to furnish transportation except from the point of intersection with the Langford Creek road, over which a district conveyance travels for the purpose of accommodating the children residing in that portion of the district which was formerly known as the Langford Creek district and which was recently annexed to the Van Etten union free school district.

It appears that the appellant is a prosperous farmer, owning about 266 acres of land, well stocked and equipped. His family consists of his wife, two sons and two daughters. He is engaged in dairying and draws milk from neighboring farms through the village of Van Etten to Spencer, three miles beyond.

The property of the appellant has been a part of district No. 1 for more than twenty-five years. There has been no change in the location of the school building of the district with respect to the appellant's residence during that time. The older children of appellant have attended school at Van Etten and at no time has a conveyance been furnished at the expense of the

district. The appellant possesses an automobile and three teams of horses and either he or his sons pass through Van Etten and near the schoolhouse in question each day while transporting milk to Spencer. They usually pass the school building in the morning at or about the time of the opening of the school session.

The rule is well established that when school is maintained in the home district and the parents have means of transportation conveyance at the district's expense will not be ordered. The appellant has failed to show that the present case constitutes an exception to this rule.

The appeal is dismissed.

In the Matter of the Appeal of L. C. SCOTT and Others from the Order of the District Superintendent Denying an Application for the Erection of a New School District out of the Territory of Union Free School District No. 22 of the Town of Hempstead, Nassau County

Case No. 599

(Education Department, July 3, 1920)

Order of district superintendent denying application for division of a district approved — recommendation that transportation be furnished or branch school established.

Where it does not appear that an existing school district is too extensive and that the educational welfare of the entire community will be promoted by a division thereof, an order of the district superintendent denying an application for a division of the district will be sustained and the appeal dismissed.

It is recommended that the district board take all necessary steps to provide either transportation of the smaller children or for the establishment of a branch school in the portion of the district sought to be set off.

J. G. Snyder, attorney for appellants.

FINLEY, Commissioner.— On or about April 8, 1920, a petition signed by a large number of residents of union free school district No. 22 of the town of Hempstead, Nassau county, was presented to the district superintendent of schools having jurisdiction over the second supervisory district of Nassau county, requesting him to form a new district from a portion of the territory of said district No. 22. On April thirtieth an order was made by said superintendent denying the application. This appeal is from such order. At present district No. 22 has an area of approximately two square miles and an assessed valuation of $2,360,000. It includes within its boundaries practically all of the incorporated village of Floral Park. The Belmont race track lies within the westerly portion of the district. It is proposed to separate the western part of the district, containing about three-fourths of a square mile, from the remainder of the district and to maintain the same as a separate district. On this portion reside approximately 125 families, including 130 children of all ages of whom about 53 now attend the Floral Park school. If this division were made the assessed valuation of district No. 22 would be decreased by about $1,000,000. In this connection it should be noted that on February 27, 1920, a special district meeting of said district voted to increase the school facilities by adding to and improving the present school building. The sum of $152,000 was voted for this purpose. In the event this improvement is accomplished it is stated that the school building so enlarged and improved will be sufficient to accommodate the pupils from all sections of the district. The school building as now located is to the east of the territorial center of the district. The distance of such building from the extreme western portion is about one and

one-third miles and the distance from the eastern portion is approximately two-thirds of a mile. The district is, therefore, about two miles wide.

The district as now constituted is not sufficiently extensive nor do the children therein reside at so great a distance from the central schoolhouse of the district as to warrant the establishment of a new district out of the territory thereof. It does not appear from the facts in the case that the educational welfare of the entire community would be promoted by such a division. If a division were made it would still be essential to provide improved school facilities for the children in the part of the district which is retained and a new building would have to be erected in the new district. Under these circumstances it would seem better to permit the district to remain as it is and to charge the expense of the proposed school improvement against the entire district.

It appears from the facts presented that children in the portion of the district desired to be set off are required to travel considerable distances and over roads that are dangerous, especially to small children, because of heavy traffic and grade crossings. Under these circumstances it is fair to impose upon the district the burden of providing transportation for the smaller children so that they may be permitted to attend school without danger. The board of education should provide such transportation at the expense of the district. It is stated that an item is to be included in the annual tax budget to be submitted to the annual meeting to be held in August next, providing for the necessary expense of such transportation. If transportation is not furnished a branch school should be established in the portion of the district sought to be set off for the benefit of the smaller children living in such portion of the district. It is, therefore, recommended that the board take all necessary steps to pro-

vide either for such transportation or for the establishment of a branch school. The district, however, should remain as it now exists, under one school administration. If there is any failure on the part of the board of education or the district to adequately provide for the smaller children in the portion of the district desired to be set off subsequent application may be made to the State Department of Education and adequate relief will be afforded.

The appeal is dismissed.

In the Matter of the Appeal of JAMES REILLY and LOUIS C. SCOTT from the Special District Meeting Held in Union Free School District No. 22 of the Town of Hempstead, Nassau County, on the 27th day of February, 1920, and from the Acts of the Board of Education of Said District

Case No. 600

(Education Department, July 3, 1920)

School district meetings — Education Law, §§ 193, 197, 200 — appeal dismissed.

In the absence of any design on the part of the board of education of a union free school district in arranging the dates of publication of notice of a special meeting under the provisions of sections 193 and 197 of the Education Law, and it appearing that the notice was published four times between February 6 and February 27, the date of the meeting, and it further appearing that the meeting was well attended and that the omission to give the notice required was not wilful and fraudulent, the meeting will not be set aside, because of alleged want of sufficient notice. Education Law, § 200.

Where a board has been authorized by a district meeting to construct or repair the school building and the district meeting has not specifically directed that such construction or repair be in accordance with certain plans then before the meeting, it is the duty of the board of education to modify the plans so as to bring the cost within the appropriation.

J. G. Snyder, attorney for appellants.

Wilson Lee Cannon, attorney for respondents.

FINLEY, Commissioner.—This appeal is from the action of the special district meeting of union free school district No. 22 of the town of Hempstead, Nassau county, held February 27, 1920, appropriating the sum of $152,000 for the erection of an addition to the present school building in said district, and from the acts of the board of education taken in connection with such appropriation. Union free school district No. 22 of the town of Hempstead includes within its boundaries nearly the entire incorporated village of Floral Park and certain additional territory. Certain outlying sections of the village and district have been developing very rapidly. The construction of a new school building has been under consideration for some time and at the annual school meeting held in August, 1918, the board of education was authorized to expend the sum of $12,000 for the purpose of acquiring lands adjoining the present school site, to be used as a site for a new school building. These lands were acquired, but the proceedings relative to the construction of a building have been delayed for various reasons until the present school year. The present building is not sufficiently large to accommodate all the pupils of the district and it has been found necessary to rent additional rooms. In addition the basement of the present building has been used for certain classes and this portion of the building has been neither sufficiently lighted nor ventilated, the classes are overcrowded and the sanitary conditions of the present building are entirely inadequate.

A meeting was called to be held on January 30, 1920, for the purpose of authorizing the erection of an addition to the present building and the appropriation of

the sum of $150,000 therefor. This proposition was defeated by a vote of 63 in favor of the resolution and 109 against. Another meeting was immediately called to be held on February 27, 1920. Notices were published in the Floral Park *Record*, a newspaper published within the district, in issues of February sixth, thirteenth, twentieth and twenty-seventh. The meeting was largely attended and a resolution was adopted authorizing the erection of an addition to and the alteration and improvement of the present building and appropriating the sum of $152,000 to be raised therefor by tax upon the taxable property in the district and to be collected in annual installments as provided by section 467 of the Education Law. The resolution was carried by a vote of 255 in favor and 176 against. An architect was present at the meeting who had prepared charts and plans for the proposed addition. The appellants allege that such plans were in the minds of the persons who voted for the resolution and that they were led to believe by statements made at the meeting that the proposed addition could be erected for the sum stated in the resolution in accordance with the plans. The resolution, itself, however, did not specifically refer to the plans.

After the adoption of such resolution the board of education proceeded to advertise for bids and it was found that the bids received considerably overran the amount of the appropriation. The plans were, therefore, modified at the direction of the board for the purpose of bringing the cost of the building within such appropriation if possible. The contract for such addition and improvement, exclusive of the heating and ventilating, has been awarded for the sum of $134,000.

The principal questions raised on the appeal relate

first, to the sufficiency of the notice given for the special district meeting held February 27, 1920, and *second,* to the legal right of the board to modify the plans which were before the district meeting. It is contended by the appellants that although there were four publications of the notice of meeting in a newspaper published within the district the notice was not published for a full period of four weeks prior to the meeting. The date of the first publication was on February sixth and the last publication was February twenty-seventh. It is not alleged that failure to give sufficient notice was either wilful or fraudulent. Under sections 193 and 197 of the Education Law the notice of a special meeting in a union free school district must be given by publishing the notice once in each week within the four weeks next preceding such district meeting, in two newspapers if there shall be two, or in one newspaper if there shall be but one published in such district. Section 200 of the Education Law provides that the proceedings of a district meeting, annual or special, shall not be held illegal for want of due notice to all of the persons qualified to vote thereat unless it shall appear that the omission to give such notice was wilful and fraudulent. There is not the slightest evidence in this case of any design on the part of the board of education in arranging the dates of publication of the notice to avoid a full compliance with the statute. Four publications were given as the law required. The meeting was well attended and there is no evidence that any person who was entitled to vote at the meeting failed to attend because of want of due notice. The number of votes cast at the meeting clearly indicates that the proposition has been considered by the voters and the majority in favor of the resolution is sufficient evidence that the voters had become convinced of the necessity of immediate action for the

improvement of school conditions. Under such circumstances the meeting may not be set aside because of an alleged want of sufficient notice.

The appellants challenge the right of the board to modify the plans which were before the meeting but which were not referred to in the resolution as adopted. It has frequently happened during the period following the war that boards of education have found that the bids for construction or repair of school buildings exceeded the sums estimated. This is due to the rapid increase in the prices of materials, the increased cost of labor and to other conditions which affect the cost of construction at this time. Where a board has been authorized by a district meeting to construct or repair the school building and the district meeting has not specifically directed that such construction or repair be in accordance with certain plans then before the meeting the board of education may with propriety modify the plans so as to bring the cost within the appropriation. In fact it is the duty of the board under such circumstances to obtain if possible a modification of the plans so as to bring the cost within the appropriation.

The appellants refer to an application that has been made to the district superintendent for a division of the district. The superintendent has refused to make such division. This matter has also come before me on appeal and the same has been dismissed. See *Matter of Scott, ante,* 347. The present building with its proposed addition and improvement will sufficiently accommodate the pupils of this district. The board of education proposes to include within its budget to be submitted to the next annual meeting of the district an item to cover the cost of providing transportation of the children from the western (or Bellerose) section of the district and also the cost of transportation of chil-

dren from the eastern section. If proper transportation facilities are thus provided the school accommodations with the proposed addition and improvement completed should prove satisfactory. The future growth of the Bellerose section may later necessitate the erection of a small building in that portion of the district for the accommodation of the smaller children. No sufficient reasons are shown on this appeal for overruling the action taken at the special district meeting held on February 27, 1920.

The appeal is dismissed.

It is hereby ordered, that the stay order granted herein on the 21st day of April, 1920, be and the same is hereby vacated.

In the Matter of CONSTRUING SECTION 22-A OF THE CIVIL SERVICE LAW, AS ADDED BY CHAPTER 836 OF THE LAWS OF 1920, in Relation to Preference in Retention of Employees upon Abolition of Positions

(Attorney-General, June 16, 1920)

Civil Service Law, § 22-a, as added by Laws of 1920, chapter 836 — preference in retention on abolition of position.

Section 22-a of the Civil Service Law as added by Laws of 1920, chapter 836, reasonably construed, provides for preference among persons holding identical positions in the same bureau or department when the number of positions is reduced. The preference in retention is based upon the date of appointment to the position held.

Hon. Frank M. Williams, State Engineer and Surveyor, submitted an inquiry, together with a request for an opinion thereon, as follows:

" Due to lack of work and for reasons of economy it will be necessary, within a short time, for the State

Engineer to make reductions in the force of engineers and assistants now employed in his department. In view of the provisions of chapter 836 of the Laws of 1920, the following questions arise with respect to the suspension of men to be laid off:

"(1) Does an original appointment mean the date originally appointed regardless of any intervening time in which the employee may have been out of the service?

"(a) A senior assistant engineer entered the service as chainman in 1901; was out of the department for two years and re-entered as leveler in 1905. Which date is to be considered the original appointment in the service?

"(2) Does it refer to original appointment in the present position or to original appointment to any position in the classified service?

"(a) Two junior assistant engineers are doing similar work and receive like salary. 'A' entered the Department as laborer in 1910 and became a rodman in 1915 and a junior assistant engineer in 1917. 'B' entered the department as chainman in 1912 and became a rodman in 1913 and a junior assistant engineer in 1917. What is the date of original appointment in the service as referred to in the law?

"(3) Does the word 'position' refer to title, the group and grade by which men are classified by the civil service; or does it refer to situation or location?

"(a) Per example; some of the assistant engineers, group D, grade 1, are field engineers in charge of construction work, while others are bridge designers, etc. Assume that an assistant engineer entered the service in 1904 and at present is in charge of construction work which will be completed shortly; assume also another assistant engineer entered the service as such in 1910 but has been and is now assigned as a bridge

designer; and assume also that the necessity for a bridge designer continues. Which may be legally suspended?

"(b) As another example, assume that an assistant engineer who entered this grade in 1912 has charge of a Barge Canal contract at Buffalo, and another man who became an assistant engineer in 1905 is on terminal construction work in New York city. Assume the work at Buffalo is to continue and the other close, and that the assistant engineer at Buffalo is best qualified by training and experience to perform this work. Which of these two men may legally be suspended?

"(c) As another case, assume that an assistant engineer in charge of terminal construction work at Rochester and another man is doing general office work; that the field work is to continue but the office work is to close; that the office man's service prior dates the field man's by eight years. Which of these two men may legally be suspended?

"(4) Does the word 'position' refer to the group in which men are classified in the engineering grades by the civil service or does it refer to similar salaries within the group?

"(a) In the group assistant engineer, for example, there are two grades; grade 1 includes mechanical engineer and draftsman, assistant engineer; salary range: $2,400, $2,520, $2,700. Grade 2: bridge designer, assistant engineer; salary range: $2,820, $2,940, $3,060, $3,240.

"(b) An assistant engineer receiving $3,060 or $3,250 was appointed in 1910 and is in charge of a large contract. He has an assistant engineer at $2,400 or $2,820 working under him as an assistant. The latter was originally appointed in 1909. The work now only requires an engineer in charge. Which one may legally be suspended?

"(c) A junior assistant engineer entered the department as laborer in 1910 and became a rodman in 1915 and a junior assistant engineer in 1917. He now receives $2,400 per year and is specialized as an assistant on designing work. Another junior assistant engineer entered the department in 1912 and became a rodman in 1913 and a junior assistant engineer in 1917. He receives $1,800 per year and is an assistant in field work. The services of the junior assistant engineer on design and office work is needed and the field man is not needed. Which one may be legally suspended?

"(5) Does the fact that the engineering grades in this department were re-classified by the Civil Service Commission in 1917 have any bearing on the case?

"(6) Does an original appointment refer to appointment in this department or would it include service of prior date in another department, if any?"

NEWTON, Attorney-General, by CHENEY, First Deputy.— Chapter 836 of the Laws of 1920 adds a new section 22-a to the Civil Service Law. This is not an amendment of secton 22-a as added by Laws of 1918, chapter 211, but a new section with a duplicated number. The same carelessness which appears in the numbering characterizes the phraseology of the act, and it is difficult to determine from its language exactly what was the legislative intent.

The new section provides: "Whenever a position in the competitive class or qualified grades in the civil service of the state or any civil division or city thereof is abolished or made unnecessary, the person holding such position shall be deemed to be suspended without pay. Such suspension shall be made in the inverse order of their original appointment in the service and such person so suspended shall be entitled to reinstatement in that or any corresponding or similar position

if within two years thereafter there is need for his services. It shall be the duty of the department or office in which such position has existed to furnish the names of all persons so suspended to the state civil service commission, or if the position is in the service of the city, to the municipal civil service commission of the said city, with a statement in the case of each of the date of his original appointment in the service, the nature of his work and his compensation and the cause of his suspension. It shall be the duty of the state civil service commission, or if the person or persons affected have been in the service of a city, of the municipal civil service commission of the said city, forthwith to place the names of said person or persons on a list of suspended employees, and for two years thereafter to certify from said list the persons thereon in the order of their original appointment for reinstatement or re-employment for the same class and grade of work at which they had been employed, before making certification from any other list. The failure of the person on any such list for reinstatement or re-employment to accept after reasonable notice any office or position in the same city, if he has been in the service of a city, or in the same county, or in the state service, if he has been employed therein, involving the same class and grade of work, and at the same salary or wages as he received in the position formerly held by him, shall be held to be a relinquishment of his rights to reinstatement as herein stated. Nothing in this section shall be construed to apply to the position, in the exempt or noncompetitive class or grade, of private secretary, cashier or deputy for any official or department, nor affect the rights of honorably discharged soldiers, sailors or marines, or volunteer firemen."

The first sentence of the section would seem to refer

to the abolition or discontinuance of single positions. The second sentence, however, says, " Such suspension shall be made in the inverse order of *their* original appointment * * *." Although the plural relative " their " has no plural counterpart in the preceding sentence, it indicates an intent to establish an order of preference in removals, and one must conclude that the intention of the act is to provide for cases where the number of similar positions in a department is reduced, as well as for cases where a single position is discontinued.

I cannot believe that the intent was to carry the preference in retention beyond identical positions in the same department or bureau of the State or of the same subdivision or city. The language of the first part of the section is broad enough to bear the construction that if a position in the county service of one county be abolished, one holding a similar position in another county must be removed first, if his "original appointment " were later than that of the incumbent of the position first mentioned. The absurdity is so obvious that it is unnecessary to discuss it. And I think it is equally obvious that there is no preference running between different departments in the State service — for example, I think nobody would claim that an assistant engineer in the State Engineer's office, whose position became unnecessary, would be entitled to have an assistant engineer in the Highway Department suspended before him, merely because the latter were junior in the service. The head of the department is required to certify the " date of original appointment," and he cannot be charged with knowledge of the date of an appointment in another department or political division.

In short I do not think the act contemplates *transferring* a man from one position (which has been abol-

ished) to another which continues, and the displacing of the incumbent of the second position (if he happens to have spent less time in the service).

And I believe this true even with respect to positions in the same department or bureau. When the time for reinstatement of a suspended employee comes, he is entitled to certification for reinstatement to a *similar* position, "for the same class and grade of work." This is equivalent to a transfer under the other provisions of the Civil Service Law and rules, and those provisions should govern the construction of the new section as far as reinstatements are concerned. A man may be transferred from one position to another "similar" position — that is another position which his education (as demonstrated by examination) and his experience in the position he is leaving qualify him to fill. But the test of qualifications for transfer or reinstatement is different from the test for preference in suspension. A man may be transferred to a "similar" position, but he is not entitled to displace a man holding a "similar" position, he may only be kept in the service in preference to another holding the *same* position. If there be a number of positions exactly alike, where employees are doing identical work, interchangeably, and the number of such positions be reduced, the preference would apply; otherwise not. For example: if there be ten stenographers in a bureau, being sent indiscriminately to take dictation from the same men, and the number be reduced, the lay-off must be in inverse order of appointment. But if in a department there were two "clerks," one assisting the auditor with his accounting and the other assisting counsel in his legal work, they would not hold the same *position,* even though their titles were the same and they were in the same grade (that is both drew salaries between the same arbitrary limits).

If the auditor found that he no longer needed a clerk, his clerk, even though longer in the service, could not displace the counsel's clerk.

We should not confuse *title* and *position.* Two persons holding the same *title* may hold very different *positions* and neither may be qualified to fill the position of the other. There is nothing in the statute showing any intent to give one the right to displace the other. On the contrary, the statute requires the head of a department, on suspending a man, to certify the *nature of his work,* which indicates the thought that men doing work of difficult natures hold different positions. Also the fact that certificates must be " for the same grade or class of work " indicates that even in the same grade and class of work there may be different *positions.* A good example is shown in the inquiry (3a). Under the title " assistant engineer " are construction engineers in charge of field work and bridge designers. While they all hold the *title* of " assistant engineer," some hold the *position* of field engineer and others the position of bridge designers. While some field engineers might make good bridge designers, and some bridge designers might make good field engineers, the chances are that they are specialized in their several lines, and to give a field engineer the right to displace a bridge designer because there was no longer need for him as a field engineer would not only be an absurdity, but would be directly contrary to the spirit of the Civil Service Law and the constitutional provision — seeking to have the holding of positions depend upon merit and fitness.

Experience in a given line of work, proved by holding a position in that line through a long period, is evidence of fitness — for that line. But not for a different line. And when the Constitution requires appointments and promotions to be based on merit and fitness,

it does not contemplate the preference of the unfit in reduction of positions.

This brings us to the question of the meaning of the phrase " original appointment in the service." Here again the statute is carelessly drawn. The phrase might mean almost anything. " Original appointment " may mean anything from the first of several appointments, even though separated by years of private life, to appointment in the position presently held. And if it refers to the first of several appointments, it might be that the different positions held were of extremely unlike natures. " The service " might mean anything from employment at public expense to employment in the position presently held.

If we should put the broadest possible construction on the phrase we would have to hold that a man who in 1885 held a position of page in the Legislature for four months, and who was appointed stenographer in the office of the chamberlain of New York city in 1920, would be preferred as against another who had been stenographer in the chamberlain's office for twenty years last past. Nobody would suggest that the Legislature intended any such absurdity. But what did they intend?

I think we must construe the statute in the light of the *merit and fitness* principle. As I have said, merit and fitness may be demonstrated by long service. But neither merit nor fitness for one position can be demonstrated by long service in another. A man who by long and faithful service as a copyist might demonstrate both merit and fitness for that position, might neither merit nor be fit for a position of trust, requiring the handling of moneys and accurate accounting. Long service as bridge designer might demonstrate the fitness for such a position of a man physically or mentally incapable of handling a gang of men in construc-

tion work. But both are classified under the same title, and the examinations for promotion to both such positions might be open to the same group of junior assistant engineer. Experience as junior assistant engineer assisting a bridge designer, would be no criterion of fitness for the position of assistant engineer in charge of construction — but the junior assistant to the bridge designer might, on examination, be promoted to be a construction engineer. In that case his fitness would be demonstrated by the examination rather than by his long service.

I am forced to the conclusion that the only reasonable construction to be put upon the phrase "original appointment in the service" as used in the statute is that it was intended to mean original *appointment to the position held* at the time of its abolition, and that only continuous service should be considered. A man appointed to a position in 1880, who resigned in 1881, and was reappointed in 1919, should not be preferred over a man who has held continuously since 1890. And a man who has been in the civil service, even in the same bureau of the same department, holding various lower positions, since 1895, who was promoted or transferred to a stated position in 1919, should not be preferred over a man who has held that stated position continuously since 1900. The latter man has unquestionably demonstrated fitness for the position he holds, the former very possibly has not — at least not in anything like the same measure.

My opinion is, therefore, that the statute should be construed as follows: When a single position is abolished, the incumbent is entitled to be listed and certified for reinstatement in the same or a similar position, before certification is made from any other list. When a number of persons held the *same position* (not the same title) and the number is to be reduced, sus-

pension must be in inverse order of appointment to that position, and the persons removed must be placed upon the preferred list and certified in the chronological order of their appointments to that position.

I will now undertake to answer specifically the questions contained in the inquiry:

(1) Continuous service is contemplated.

(a) The appointment to the present position should be considered.

(2) Appointment to the present position is contemplated.

(a) The one first appointed to the present position is entitled to preference in retention.

(3) The word "position" does not refer to title, group or grade, but to what is colloquially termed the "job."

(a) The field engineers hold one position, the bridge designers another, regardless of their titles. On abolition of a position of a field engineer, it is not necessary to remove a bridge designer and transfer a field engineer who may not be qualified to design bridges.

(b) Engineers in charge of barge canal construction and engineers in charge of terminal construction hold different positions if the nature of their work is different. Either may be abolished without interference with any person holding the other.

(c) Engineers in charge of construction and engineers doing general office work would seem to be doing work of different natures. If so they hold different positions.

(4) Two positions can hardly be the same if the salaries are different. Salary is one of the elements considered by the Legislature in requiring certification to the Civil Service Commission of the names of suspended men.

(a) A $2,400 man and a $2,700 man can hardly be

said to hold the same position — one has more responsible or more arduous duties than the other, or is better qualified and delivers more work. One man holds a "better job" or a "bigger job" than the other. The discretion of the head of the department as to which position to abolish is not interfered with, and there is no provision for transfer. And if the $2,700 position is abolished its incumbent cannot displace the $2,400 man at the latter salary, any more than could the $2,400 man displace the $2,700 man, should the $2,400 position be abolished. This applies even more forcibly as between positions in different grades.

(b) Either position may be abolished, without interference with the other. It is to exercise discretion in such matters that we have heads of departments.

(c) The positions are different both by reason of difference in nature of work and difference in salary. Either may be abolished without interference with the other.

(5) The title or classification has nothing to do with the case. Incumbency in a position controls, and change of title does not change a *position* if the duties remain the same.

(6) "Original appointment" must mean appointment to the position in the department, except where the position as well as the incumbent has been transferred from one department to another. When the control of highways was transferred from the State Engineer to the Highway Commission, and when the corporation tax was shifted from the Comptroller's jurisdiction to that of the Tax Department, certain employees were transferred from one department to another without change of duties or of position. Length of service in the *position* should control in such cases, regardless of change in departmental control.

In the Matter of CONSTRUING SECTION 245 OF THE MILITARY LAW, in Relation to Conflicting Amendments Added by Chapters 248 and 630 of the Laws of 1920

(Attorney-General, June 24, 1920)

Military Law, § 245, subd. 8 — Laws of 1920, chapters 248 and 630 — statutes — conflicting amendments to same section.

Chapters 248 and 630 of the Laws of 1920 each added a new subdivision 8 to section 245 of the Military Law. The two new subdivisions being inconsistent, the later one must be deemed to repeal the former.

Hon. Eugene M. Travis, State Comptroller, submitted an inquiry, together with a request for an opinion thereon, as follows:

" Chapter 248 of the Laws of 1920, effective April 19, 1920, amended section 245 of the Military Law by adding a new subdivision, to be subdivision 8, to read as follows:

" 'An officer or employee of the state who entered the federal military, naval or marine service subsequent to April sixth, nineteen hundred and seventeen without the consent of the governor as required by this section or by chapter four hundred and thirty-five of the laws of nineteen hundred and seventeen, and who shall have been in the service of the state previous to the declaration of war and who shall have been honorably discharged from such service, shall be entitled to the rights and privileges conferred by this section in the same manner and to the same extent as though he had procured the consent of the governor to enter the federal service.'

" Chapter 630 of the Laws of 1920, effective May 10, 1920, amended section 245 of the Military Law by adding a new subdivision 8 to read as follows:

" 'An officer or employee of the state who entered

the federal military, naval or marine service subsequent to April sixth, nineteen hundred and seventeen without the consent of the governor as required by this section or by chapter four hundred and thirty-five of the laws of nineteen hundred and seventeen, and who at the time of such entrance shall have served as such state officer or employee for the period of at least one year immediately prior thereto and who shall have been honorably discharged from such service, shall be entitled to the rights and privileges conferred by this section in the same manner and to the same extent as though he had procured the consent of the governor to enter the federal service and shall be paid such part of the salary or compensation which he would have received as such officer or employee in excess of the compensation paid to him for the performance of his duty in the military, naval or marine service described in this section, notwithstanding his failure to procure such consent of the governor.'

"This chapter also made an appropriation of $25,000 for the purpose provided in subdivision 8 as added thereby.

"Should the later enactment be considered as superseding the former, or should both be given effect?"

NEWTON, Attorney-General, by CHENEY, First Deputy.—It sometimes happens that the same number is given in the Legislature to two entirely different amendments to a given law. The mere conflict of numbers will not, of course, repeal the earlier statute. For example, section 22-a of the Civil Service Law was added by chapter 211 of the Laws of 1918 and another section 22-a, on an entirely different subject, was added by chapter 836 of the Laws of 1920. There is no conflict or inconsistency between the statutes and both undoubtedly remain in force. See opinion of Attorney-General, *ante*, 355.

But in the case of the amendments quoted above, they refer to the identical subject matter and are quite inconsistent. Chapter 248 was introduced in the Assembly on March first. At the time of its introduction it contained the words "and who at the time of such entrance shall have served as such state officer or employee for the period of at least one year immediately prior thereto" as a limitation on those entitled to the benefit of the subdivision. This limitation was stricken out in committee and the bill was reported on March tenth in the form in which it is quoted above, and passed the Assembly on March twenty-second. It was passed in the Senate on April ninth and signed by the Governor on April nineteenth.

After this bill had passed the Assembly and was in the hands of the Senate, the other bill, which became chapter 630, was introduced in the form in which it is quoted above. It was referred to the committee on military affairs, the same committee which had considered the former bill, but was not amended. There can be no doubt that the committee was aware of the passage of the first bill and of the similarity in the two bills.

The later act carries the provision that persons to be benefited by it must, at the time of entrance into military service, have served as State officers or employees for the period of at least one year, but it also adds the provision for salary which he would have received, etc., not mentioned in the first statute. Otherwise the two acts are not only similar but identical. The suggestion that the second bill was introduced in ignorance of the existence of the first bill cannot be entertained. It is perfectly clear that the first bill was unsatisfactory to the persons who drew and introduced the second bill, and since the second bill was passed we must impute the same intent to the Legislature as a whole.

The two bills are not consistent and it would be absurd to suggest that the Legislature intended both to remain in effect. If the first bill is to be regarded as remaining on the books, there would be absolutely no necessity for the second. To consider both bills in effect would be to attribute to the Legislature an intent similar to that of the humorist who cut a large hole in the barn door for the cat, and a small hole alongside of it for the kitten.

I must conclude that it was the intent of the Legislature to have the second act repeal the first in so far as they are inconsistent, and since everything that is in the first act is also contained in the second, we may consider the first act as completely superseded just as if the introductory clause of the second bill had read: "Subdivision 8 of section 245 of the Military Law, as added by chapter 248 of the Laws of 1920, is hereby amended to read as follows:"

In the Matter of CONSTRUING ARTICLE 4-A OF THE GENERAL BUSINESS LAW, as Added by Chapter 775 of the Laws of 1920, in Relation to Licensing Persons Practicing Professional Engineering or Land Survey.

(Attorney-General, July 7, 1920)

General Business Law, art. 4-a — Laws of 1920, chap. 775 — engineers and surveyors — eligibility of members to such board of licensing for professional engineers and land surveyors.

The law providing for a State board of licensing for professional engineers and surveyors requires that each member of the board shall be a licensed professional engineer. Under the statute the State Board of Regents should license the members of the first board appointed in order that the members may fulfill this qualification.

Hon. Augustus S. Downing, Assistant Commissioner and Director of Professional Education, submitted an inquiry, together with a request for an opinion thereon, as follows:

"The law passed at the last session of the Legislature provides for licensing persons practicing or offering to practice professional engineering or land surveying in this State. There is created a State board of licensing for professional engineers and land surveyors, who shall be appointed by the Regents of the University of the State of New York within sixty days after the act took effect on May 14, 1920. Among the qualifications required of members of the board is that they shall be licensed engineers. Can the law be made operative, in view of the fact that there has not heretofore been in existence authority empowered to license the members of the first board appointed?"

NEWTON, Attorney-General.— Article 4-A was added to the General Business Law by chapter 775 of the Laws of 1920. It took effect, by approval of the Governor, on May 14, 1920. Under section 38 of the statute the Regents of the University of the State of New York are required to appoint a State board for licensing professional engineers and land surveyors, consisting of five members, within sixty days after the act took effect. The statute provides under section 39:

§ 39. *Qualifications and expenses.* Each member of the board shall be a citizen of the United States and a resident of this state at the time of his appointment. He shall have been engaged in the practice of his profession for at least ten years and shall have been in responsible charge of work for at least five years. *He shall be a licensed professional engineer.* Each member of the board shall receive a compensation determined by the regents for attending sessions of the board or of its committees, and for the time spent in

necessary travel, and, in addition, shall be reimbursed for all necessary traveling, incidental and clerical expenses incurred in carrying out the provisions of this act."

Under section 38 it is provided that a board "is hereby created," and then goes on to direct that the Regents shall appoint a board.

A similar situation was discussed in *People ex rel. Van Deren* v. *Moore*, 78 App. Div. 28. There the court had to consider the provisions of the General City Law in relation to plumbing. The statute provided that of the members of the examining board in cities, two should be employing or master plumbers of not less than ten years' experience in the business of plumbing. The statute in that case likewise prohibited the practice of plumbing without a license from a board of examiners, and provided a penalty for doing business without a license. The mayor of the city of Geneva refused to appoint a board, upon the ground that there were not to be found in the city of Geneva two employing or master plumbers of not less than ten years' experience. The proceeding was to compel the appointment of a board by a peremptory writ of mandamus. The court held that the lack of persons having the statutory qualifications for appointment was a good defense, which might be raised by the mayor upon an alternative writ of mandamus.

The situation presented here is different for two reasons: *First.* It is a cardinal rule of statutory construction that the Legislature will not be charged with having done a useless thing. Article 4-A of the General Business Law is a carefully drafted statute of some sixteen sections. Every question should be resolved in favor of the validity of the Legislature's act and we shall strive to give it full force and effect, rather than to deny it any operation whatever. In the *Van Deren* case, the statute was operative in many

cities. The peculiar situation in Geneva did not destroy it altogether. In the instant case, the legislation must fail, if we find that it is so drafted as to prevent any possibility of the appointment of a board. This leads to absurdity which the law abhors. *Second.* The statute in this case contains a provision under section 39-a intended to cover precisely the situation we now face. I am informed that the Governor, in his consideration of the bill, interpreted the provision, which I will now quote as sufficient to give life to the statute. Section 39-a in part provides.

" § 39-a. *Powers of the board.* Each member of the board shall receive a certificate of appointment from the regents, and before beginning his term of office he shall file with the secretary of state the constitutional oath of office. *Each member of the board first created shall receive a certificate of license under this act from the regents of this state.* * * *"

The only possible argument I see against the effectiveness of this provision is that the statute seems to provide by inverse order for the steps to be taken in establishing the first board. The statute, in section 38, first " creates " a board and then provides for the appointment of a board by the Regents, for certificates of appointment from the Regents and for the issuance of certificates of license to the members. Although admitting that some confusion exists here in the order of the proceeding, nevertheless, for the reasons I have given, I am of the opinion that this should not invalidate the law. Although the board is first created by the statute, it is the membership and qualifications of the members which we have to deal with now. The board was theoretically existing at the time the Governor approved the bill. Its membership, however, will not come into existence until the board makes the appointments, issues certificates, and licenses the members as engineers and surveyors. The

latter acts of issuing the certificates of appointment and licensing the persons so certified may be provided contemporaneously, so that the members appointed became members of the board and licensed engineers and surveyors at one and the same time.

I am, therefore, of the opinion that the Board of Regents of the State of New York should proceed to appoint, certify and license five persons as members of the State Board of Licensing for Professional Engineers and Land Surveyors on or before July 14, 1920.

It has been stated that the Regents will be unable within the sixty days allowed by law to select the members of the licensing board, and that there will not be another regular meeting of the Regents until next October. The statute does not require the impossible. If competent men may not be selected within the time mentioned in the statute, the provision for sixty days may be regarded as advisory rather than as mandatory. The appointments should not, however, wait upon the convenience of a stated meeting.

In the Matter of the Application of the VILLAGE OF JOHNSON CITY for Approval of its Acquisition of a Source of New Water Supply and of its Financial and Engineering Plans for the Construction of a New Water Supply System

Water Supply Application No. 255

(Conservation Commission, June 29, 1920)

Application approved as modified.

BY THE COMMISSION.— William W. Benjamin, acting for and in the name of the village of Johnson City, of

which municipality he is the president, on May 3, 1920, made application to the Conservation Commission for its approval of the acquisition by that village of an additional source of water supply and the development thereof. This petition was filed in the office of the Conservation Commission May 4, 1920.

On September 19, 1919, the Commission had caused the site of the proposed works and the proposed source of water supply to be inspected by one of its engineers.

After due notice, published in the *Record* of Johnson City, the Binghamton *Press* and the *Morning Sun* of Binghamton, and posted in said village, a hearing was held on this application in the Municipal Building of the village of Johnson City on the 18th day of May, 1920, at 10:00 o'clock in the forenoon. At this hearing the Commission considered the petition, maps and plans submitted, examined witnesses and heard arguments for the project, as shown by the minutes. The petitioner was represented by C. Fred Johnson, president of the board of water commissioners, by James E. Connerton, village attorney, and by other village officials.

It is proposed to obtain additional water for this village from nine driven wells to be sunk sixty feet from the right bank of the Susquehanna river at the foot of Camden street. These wells are to be sunk in two rows, the lines being ten feet center to center and the wells eighteen feet center to center. They are to be twelve inches in diameter and to be driven to a depth of about sixty feet to enter a bed of coarse water bearing gravel. These wells are to be connected together by a manifold pipe at a depth of about ten feet below the low water level of the Susquehanna. Over them is to be erected a concrete pumping station, built as a water-proof caisson, the floor of which will be ten feet below the ground level, which level is about ten

feet below the highest recorded floods of the Susquehanna. In this station are to be installed two 3,500-gallon-per-minute centrifugal pumps, with horizontal shafts direct connected to suitable electrical motors. Current for operating this station is to be obtained from the power plant of the Binghamton Light, Heat and Power Company, which is situated about one-quarter of a mile east of the pumping station. An emergency connection will be made to the power plant of the Endicott-Johnson Corporation. Water from the wells is to be pumped through two and twenty-seven-one-hundredths miles of force main, to be constructed of twenty-four-inch, twenty-inch and sixteen-inch cast-iron pipe, to the distribution system of the village and two 2,000,000-gallon riveted steel standpipes, to be built north of the village and adjacent to the existing reservoir. In addition, it is proposed to lay two and twenty-seven-one-hundredths miles of cast-iron distribution piping to reinforce and extend the present system in the village and to install 146 double nozzle fire hydrants. It is not proposed to purify this water in any way, but provision is to be made for the future installation of apparatus for sterilizing it with liquid chlorine.

After due study of the petition and its exhibits, the evidence and arguments given at the hearing and the report of the engineers of this Commission on this application, it appears as follows:

Johnson City is an incorporated village in the town of Union, Broome county. It is situated on the right bank of the Susquehanna river immediately west of and adjacent to the westerly boundary of the city of Binghamton. This village has a separate board of water commissioners. It is a place of industrial importance, containing many large manufactories, the most important of which are the shoe factories of the

Endicott-Johnson Corporation and its allied industries. The village is traversed by the main lines of the Erie and the Delaware, Lackawanna and Western railroads and by an electric car line running between Binghamton and Union. According to the petition, the population of the village is now about 8,500 and the assessed valuation of property therein by the last roll was $4,969,519. The village has an outstanding bonded indebtedness of $123,700 incurred for general purposes, and $73,900 for waterworks purposes.

This village has long had a public water supply system, now owned by the municipality. Water for it is obtained from a group of wells driven in the valley of Little Choconut creek north of the Erie railroad tracks. Water from the wells is pumped, by a steam pumping engine aided by a vacuum pump, into the existing distribution system and into a one million gallon distribution reservoir, situated on the hillside north of the village at such an elevation as to give fair pressures for fire protection therein. Apparently the water pumped from these wells and from certain adjacent wells of the Endicott-Johnson Corporation, which have at times been used to augment the village supply, is of reasonably good quality, although the surroundings of the wells are not over favorable.

During the past ten years there has been an enormous increase in the industries of this village, followed by a corresponding increase in the population thereof, and also of the consumption of water therein. In 1910, the Endicott-Johnson Corporation employed 500 hands; the local mills of this company now employ over 9,000 hands. In addition, numerous other industries have erected factories in this village and employ large numbers of people. Prior to 1910, the population of Johnson City was about 4,000; in 1915 it was about 5,400 and is now estimated by the village authorities

at 8,500. It is assumed that it will soon be 10,000. At the present time the Endicott-Johnson Corporation has under way a housing project of 1,000 dwellings. At least 250 dwellings are under construction and more are urgently needed.

Not only will all of the present inhabitants and the people who are expected soon to take up their residence in this village require water for domestic purposes, but the industrial demands for water are very large and are increasing. Many of the mills depend upon the village system for water for industrial purposes. It is estimated that the present safe requirements of the village are 8,000,000 gallons of water per day, whereas the safe yield of the present sources is less than 4,000,000 gallons per day.

During the past three years there has at times been a shortage of water. This has been partially relieved by pumping from wells owned by the Endicott-Johnson Corporation. Last summer the situation became acute and shortage of water came near to closing down the industries of this community. Some of them were closed down for short periods, but the pumping of water from the experimental wells sunk adjacent to the wells now under consideration tided the village over without serious mishap. Nevertheless there were times when the reservoir was empty and this community was left with practically no fire protection.

As regards meters, this village is somewhat unusual, as all of the domestic consumers are metered, whereas the manufacturing industries are not. It is possible that universal metering would somewhat reduce the consumption of water but additional water is required.

Last summer the village authorities selected the proposed source of additional water supply and sank experimental wells as above mentioned. Later the firm of Hoadley & Giles, consulting engineers, of Binghamton, were called upon to design the necessary

works for developing this source and to prepare plans and estimates thereon.

On October 13, 1919, the board of water commissioners of Johnson City petitioned the board of trustees of said municipality to call a special election to authorize the development of the proposed additional supply and to authorize a bond issue of $250,000 to defray the cost thereof. Such election was called by said board of trustees on October 13, 1919, the election was held October 28, 1919, and the proposition carried in the affirmative. Certain irregularities in the procedure were cured by a legalizing act of the Legislature known as chapter 294 of the Laws of 1920. The making of the present petition to the Conservation Commission was authorized by resolution of the board of trustees at a meeting held April 26, 1920.

In the spring of 1920, pumping tests were conducted on experimental wells sunk near the site of the proposed pumping station. These tests indicated that a considerable volume of water might be obtained by the proposed development. No test of such a source of supply, other than long continued use, can be considered definitely reliable; but it seems evident that the supply of Johnson City can be augmented from wells sunk at this point, as proposed, and that a further augmentation of the supply can be obtained by sinking additional wells in the neighborhood.

The water to be pumped from these wells comes from a bed of water bearing gravel, which in part is fed by ground water from the valley of Little Choconut creek and from the hills north of the village. During the tests it apparently did not come from the Susquehanna river. Analyses of this water showed that, at that time, it was of excellent sanitary quality. There is always a possibility that heavy pumping will cause water to be drawn directly from the Susquehanna

river, which is polluted by the sewage of Binghamton. If this happens, purification of the water probably will be necessary. There is also danger that during floods, Susquehanna water which may stand to a depth of ten feet over the ground about the proposed wells, may enter them and contaminate the supply. It will be necessary to exercise great care in sealing the tops of these wells in order to prevent such contamination. In order to protect the health of the inhabitants of this village, the Commission will require that apparatus for sterilizing this water, by liquid chlorine or otherwise, be installed in the pumping station; that this apparatus be operated whenever the Susquehanna overflows the ground about the pumping station, and that it be continuously operated if future analyses shall indicate the necessity therefor.

It is doubtful whether the whole project, above outlined, can now be constructed with the money available for the purpose. Sufficient funds are, however, available for the complete development of the new supply; the construction of some of the new mains in the village street can be deferred.

The proposed works, if carefully constructed in accordance with the plans and specifications submitted, of suitable materials and with the best of workmanship, will be safe and adequate for the purposes for which designed. The Commission will, however, require that full detailed plans for the piping and pumping machinery at the pumping station be submitted to it for approval before these portions of the work are installed and it will permit the submission of modified plans and specifications if the village so desires. In any event, all work to be constructed by virtue of this approval shall be in complete accordance with plans and specifications which have previously been sub-

mitted to and approved by this Commission and such works shall be completely constructed.

The applicant proposes to acquire 14,173 square feet of land on which to sink the wells and to erect the pumping station. It will also acquire rights of way for its force main and a small parcel of land on which to erect the proposed standpipes.

Alternative sources of water supply exist, but do not appear to offer advantages greater than those of the proposed source of supply.

The carrying out of this project will not in any way affect the water supply interests of any other municipality or civil division of the State.

The legal damages which may be caused by the execution of the plans of the petitioner do not appear to be such as to require any special consideration or legislative enactment in order that they may be equitably determined and paid.

In consideration of the above, and subject to the modifications hereafter stated, the Commission therefore finds and determines:

First. That the plans proposed are justified by public necessity.

Second. That said plans provide for the proper and safe construction of all work connected therewith.

Third. That said plans provide for the proper protection of the supply and the watershed from contamination and that filtration at the present time is unnecessary.

Fourth. That said plans are just and equitable to the other municipalities and civil divisions of the State affected thereby and to the inhabitants thereof, particular consideration being given to their present and future necessities for sources of water supply.

Fifth. That said plans make fair and equitable provisions for the determination and payment of any and

all legal damages to persons and property, both direct and indirect, which will result from the execution of said plans or the acquiring of said lands.

Provided, however, that the said application, maps and plans as submitted shall be modified and the Commission does hereby determine that they be modified and that the work done thereunder be subject to the following conditions:

1. All the work proposed in this application for the development of the additional source of supply shall be completely constructed in accordance with the plans as hereby revised.

2. Complete detailed plans of the piping and pumping equipment of the pumping station shall be submitted to this Commission for its approval before such works are installed. Modified plans for this pumping station may be submitted, together with the appropriate specifications therefor, if the applicant so desires.

3. All the work for the development of the wells, pumping station and force main shall be completely constructed in accordance with the plans and specifications which have previously been submitted to and approved by this Commission.

4. Satisfactory apparatus for the sterilization of all water pumped from these wells, by liquid chlorine or otherwise, shall be installed and all water pumped from these wells shall be sterilized in a satisfactory manner during such periods of time as the Susquehanna river may overflow the land about the pumping station, or at other times, or continuously, if future analyses and inspections shall show necessity therefor.

5. After these works have been constructed they shall be inspected by and be subject to the approval of this Commission, and such works shall not be operated until permit to do so has been issued by this Commis-

sion, as provided by section 523 of the Conservation Law.

Wherefore, the Conservation Commission does hereby approve the said application of the Village of Johnson City as thus modified.

In Witness Whereof, the Conservation Commission has caused this determination and approval to be signed by the Commissioner and has caused its official seal to be affixed
[L S.] hereto and has filed the same with all maps, plans, reports and other papers relating thereto in its office in the city of Albany this 29th day of June, 1920.

CONSERVATION COMMISSION,
GEO. D. PRATT,
Commissioner.

Attest:
WARWICK S. CARPENTER,
Secretary to the Commission.

In the Matter of the Application of the LAKELAND WATER DISTRICT of the Town of Geddes, Onondaga County, N. Y., for Approval of Its Acquisition of a Source of Water Supply and of its Financial and Engineering Plans for the Construction of a Water Supply System

Water Supply Application No. 256

(Conservation Commission, July 15, 1920)

Application approved as modified.

BY THE COMMISSION.— Thomas Barry, acting on behalf and in the name of the Lakeland Water district, of the board of water commissioners, of which body

he is the president, on March 2, 1920, made application to the Conservation Commission for its approval of the project of installing a water supply system in said district. This application was filed in the office of the Conservation Commission June 15, 1920. On June 29, 1920, the Commission caused the water district to be inspected by one of its engineers.

After due notice in the Solvay *Express* and the Syracuse *Post Standard,* a hearing on this petition was held in the Town Hall of the town of Geddes, in the village of Solvay, at 10 o'clock in the forenoon. At this hearing the Commission considered the petition, maps and plans submitted and heard arguments for the project. The petitioner was represented by Lamont Stilwell, its attorney. No objections were filed and no one appeared in opposition.

It is proposed to install a public water supply system in Lakeland Water district. The existing water distribution piping laid by the United States government in the former military camp in and about the State Fair Grounds is to be acquired, remodeled and extended to connect with the water mains of the village of Solvay. There are at present about 10,000 feet of pipe in place; 4,600 feet of eight-inch and 180 feet of four-inch cast-iron-pipe are to be laid and ten fire hydrants installed. Water is to be purchased from the village of Solvay and delivered into the mains of the district system through a meter.

After due study of the petition and its exhibits, the evidence and arguments given at the hearing and the report of the engineers of the Commission on this application, it appears as follows:

Lakeland Water district is that portion of the town of Geddes, Onondaga county, lying north of the village of Solvay and south of Manhattan Beach on Onondaga Lake. The area thereof is approximately

three square miles. This district includes the New York State Fair Grounds, the plants of the Halcomb Steel Company, the Crucible Steel Company of America, a part of that of the Solvay Process Company and other industries. It is traversed by the main lines of the New York Central, West Shore and Rochester, Syracuse and Eastern railways and also by the branch of the Delaware, Lackawanna and Western Railway running between Syracuse and Oswego.

This district was formed by order of the town board of the town of Geddes November 24, 1919, at which time the board took action upon a taxpayers' petition for the formation of the district, dated September 30, 1919, and filed with the town clerk of the town of Geddes November 10, 1919. At this time the town board appointed water commissioners for the district and these commissioners since then have qualified and entered into the duties of their office. The making of the present petition to the Conservation Commission and the signing thereof by the president of the board of water commissioners was authorized by resolution of said Commissioners March 2, 1920.

It is stated by the petition that the present population of Lakeland Water district is estimated at 350 persons. The assessed valuation of taxable property therein by the last roll was $3,391,115. The district has no bonded indebtedness.

On account of the large number of important manufacturing industries which are now located in this district, it is expected that the present population will greatly increase within the next few years and that there will be a large demand for water therein. There is also a possibility that additional manufacturing plants may be established therein and that they may require water for their operations. At the present time there is no public water supply system in this